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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/742,307	12/19/2003	Kenneth W. Whitley	79557	5667
26253 7590 07/20/2007 DAVID W. HIGHET, VP AND CHIEF IP COUNSEL BECTON, DICKINSON AND COMPANY 1 BECTON DRIVE, MC 110 FRANKLIN LAKES, NJ 07417-1880			EXAMINER MAI, TRI M	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 07/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/742,307

Applicant(s)

WHITLEY, KENNETH W.

Examiner

Tri M. Mai

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Art Unit: 3781

1. Claims 1, 2, 3, 7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Parker (3946903), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Parker in view of Norwood (5209372). Parker teaches a bottle having a bottom wall formed by portion 2 in Fig. 2 including the slanted sidewall at numeral 2, sidewall and a top wall the bottom wall being formed unitarily with and having a generally having the same diameter as the sidewall. Note that the junction of the bottom at the body portion and the slanted wall at 2 in Fig. 1 would have the same diameter as the body. Furthermore, the bottom 21 also have a diameter of the body wall since the diameter of the body in Parker varies similar to that of applicant's. Parker also teaches first and second inner apices 13 being located generally equal from the outer apex 12. With respect to the bottle being used for cell growth and the bottom wall being compatible with cell growth, it is submitted that it is an intended use and the bottle as claimed does not impart any structure over the bottle in Parker.

In the alternative, it would have been obvious to one of ordinary skill in the art to provide the bottom having the same diameter as the body to provide an alternative bottom for the container.

2. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Claims 1, 2, 3, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Norwood (5209372). Norwood teaches a bottle having a sidewall formed with helical pleats as claimed. With respect to the bottle being used for cell growth and the bottom wall being compatible with cell growth, it is submitted that it is an intended use and the bottle as claimed does not impart any structure over the bottle in Norwood.

Art Unit: 3781

3. Claims 1, 2, 3, 5, 7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 2001-335036. JP '036 teaches a sidewall formed with at least one helical pleat as claimed. With respect to the bottle being used for cell growth and the bottom wall being compatible with cell growth, it is submitted that it is an intended use and the bottle as claimed does not impart any structure over the bottle in JP '036.

Regarding claim 5, note that helical pleat is interrupted by a plurality of planar sections at portion 5. Note that the claim does not exclude the plurality of planar sections extending from bottom wall to top wall at all. In this case, the plurality of planar sections 5, together extending substantially from bottom wall to the top wall.

4. Claims 4, 6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over anyone of Parker or JP '036. It would have been obvious to one of ordinary skill in the art to provide the thickness as claimed to provide the desired thickness for the container.

Regarding claim 7, it would have been obvious to one of ordinary skill in the art to provide the pitch as claimed to provide the desired angle for the helical pleat.

Regarding claim 8, it would have been obvious to one of ordinary skill in the art to provide the distance as claimed to provide the desired size for the pleat.

5. Applicant's arguments have been fully considered but they are not persuasive. Applicant asserts that in the bottle of Parker the bottom does not have the same diameter as the body wall. It is specification in this present application show the body of the bottle having a diameter varies as defined by the pleat. The bottom 14 is shown in Fig. 1 as having a diameter equal to that of the outer vertex of the pleat. As set forth above, the bottom wall of Parker formed by portion 2 in Fig. 2 including the slanted sidewall at numeral 2 and at this juncture the diameter of the

Art Unit: 3781

bottom is the same as diameter of the body wall. Furthermore, the bottom 21 also have a diameter of the body wall since the diameter of the body in Parker varies similar to that of applicant's.

With respect to the Norwood rejection, the new claim 9 does not read over Norwood. As set forth above, the bottle being used for cell growth and the bottom wall being compatible with cell growth is an intended use, it is submitted the bottle as claimed does not impart any structure over the bottle in JP '036.

With respect to the claims 4, 6-8, applicant should note that a change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241). In this art of bottle, changing the various sizes and dimension, angle pitches are within the level of ordinary skill in the art.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3781

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
Art Unit 3781

